

AMENDED IN SENATE APRIL 4, 2005

SENATE BILL

No. 815

Introduced by Senator Ortiz

February 22, 2005

An act to amend Section 415.50 of the Code of Civil Procedure, relating to service by publication.

LEGISLATIVE COUNSEL'S DIGEST

SB 815, as amended, Ortiz. Civil procedure: service by publication.

Existing law provides for the service of a summons by publication under specified circumstances. *Notwithstanding an order for publication of the summons, a summons may be served in another authorized manner, in which event the service shall supersede any published summons.*

This bill would ~~make a technical, nonsubstantive change in that provision~~ delete the latter provision, and provide that in lieu of publication of the summons, a plaintiff may elect to serve the defendant's insurance company if the insurer has acknowledged the claim and has not denied coverage on the loss. The bill would provide that a plaintiff who elects to serve the defendant's insurer as a substitute for service by publication thereby waives any claim above the policy limits of the insured.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 415.50 of the Code of Civil Procedure
- 2 is amended to read:
- 3 415.50. (a) A summons may be served by publication if upon
- 4 affidavit it appears to the satisfaction of the court in which the

1 action is pending that the party to be served cannot with
2 reasonable diligence be served in another manner specified in
3 this article and that either:

4 (1) A cause of action exists against the party upon whom
5 service is to be made or he or she is a necessary or proper party
6 to the action.

7 (2) The party to be served has or claims an interest in real or
8 personal property in this state that is subject to the jurisdiction of
9 the court or the relief demanded in the action consists wholly or
10 in part in excluding the party from any interest in the property.

11 (b) The court shall order the summons to be published in a
12 named newspaper, published in this state, that is most likely to
13 give actual notice to the party to be served. If the party to be
14 served resides or is located out of this state, the court may also
15 order the summons to be published in a named newspaper
16 outside this state that is most likely to give actual notice to that
17 party. The order shall direct that a copy of the summons, the
18 complaint, and the order for publication be forthwith mailed to
19 the party if his or her address is ascertained before expiration of
20 the time prescribed for publication of the summons. Except as
21 otherwise provided by statute, the publication shall be made as
22 provided by Section 6064 of the Government Code unless the
23 court, in its discretion, orders publication for a longer period.

24 (c) Service of a summons ~~by publication in this manner~~ is
25 deemed complete as provided in Section 6064 of the Government
26 Code.

27 ~~(d) Notwithstanding an order for publication of the summons,~~
28 ~~a summons may be served in another manner authorized by this~~
29 ~~chapter, in which event the service shall supersede any published~~
30 ~~summons.~~

31 *(d) (1) In lieu of publication of the summons, a plaintiff may*
32 *elect to serve the defendant's insurance company if the insurer*
33 *has acknowledged the claim and has not denied coverage on the*
34 *loss. A copy of the summons and complaint may be served by a*
35 *substituted service of process upon the defendant's insurer with*
36 *the agent for process designated by the insurer with the*
37 *Secretary of State, as provided in subdivision (b) of Section 1502*
38 *of the Corporations Code. Substitute service of process shall be*
39 *effected by delivering a copy of the summons and the complaint*
40 *to the person who is apparently in charge of the office, during the*

1 usual hours of business, or by mailing a copy of the summons
2 and the complaint by registered mail, return receipt requested,
3 addressed to the person to be served at the address of the insurer
4 where a copy of the summons could have been delivered. The
5 answer shall be filed in accordance with Section 68616 of the
6 Government Code.

7 (2) A plaintiff who elects to serve the defendant's insurer
8 pursuant to paragraph (1) as a substitute for service by
9 publication thereby waives any claim above the policy limits of
10 the insured. However, the plaintiff's election to limit his or her
11 claim to policy limits shall be deemed null, and the plaintiff's
12 demand shall no longer be limited to the policy limits, if any of
13 the following occur:

14 (A) The insured participates in discovery after commencement
15 of the action.

16 (B) The nature or extent of the plaintiff's injuries change.

17 (C) The complaint is later personally served.

18 (3) Nothing in this subdivision shall affect any policy defenses
19 that may exist as between the insured and the insurer.

20 (e) As a condition of establishing that the party to be served
21 cannot with reasonable diligence be served in another manner
22 specified in this article, the court may not require that a search be
23 conducted of public databases where access by a registered
24 process server to residential addresses is prohibited by law or by
25 published policy of the agency providing the database, including,
26 but not limited to, voter registration rolls and records of the
27 Department of Motor Vehicles.